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PERKINS COIE LLP
P.O. BOX 2168
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In re Application of :
HARLEY, Calvin et al. :
Application No.: 10/562,410 : DECISION
PCT No.: PCT/US04/20338 :
Int. Filing Date: 24 June 2004 : ON PETITION UNDER
Priority Date: 25 June 2003 :
Docket No.: 38797-8007.US00 : 37 CFR 1.47(a)
For: COMPOSITIONS AND METHOD FOR :
SKIN CONDITIONING :

This is a decision on applicants' Petition Under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 07 September 2006.

BACKGROUND

On 08 May 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) and the surcharge for late filing of the search fee, examination fee or oath or declaration were required.

On 07 September 2006, applicants submitted a petition under 37 CFR 1.47(a), which was accompanied by, *inter alia*, a declaration and the fee for a two month extension of time.

DISCUSSION

A petition under 37 CFR 1.47 must be accompanied by: (1) the fee under 37 CFR 1.17(h), (2) proof of pertinent facts, namely that the inventor refuses to sign after being presented with the application papers or cannot be reached after diligent effort, (3) a statement of the last known address of the inventor, and (4) an oath or declaration by the 37 CFR 1.47(a) applicant on behalf of himself or herself and the nonsigning applicant.

Items (1) and (3) have been met. (1) The petition fee of \$200 has been paid. (3) The petition lists the last known addresses of non-signing inventor David Miller-Martini as 409 Pine Street, Ridgway, PA 15833.

Item (2) has not been satisfied. The petition must supply proof that applicant refused to sign after being presented with the application papers (specification, including claims, drawings, and oath or declaration). MPEP §409.03(d). Currently, it is not clear that applicant received a complete copy of the application papers. The correspondence from applicant appears to use application and declaration for the application interchangeably and counsel did not forward the documents directly to applicant. However, more importantly, applicant contends that information listed in the declaration is incorrect and he appears unwilling to sign the declaration if that information is not corrected. As indicated in Mr. Miller-Martini's email, applicants should correspond with Mr. Miller-Martini's counsel Gwendolyn Wood.

Item (4) has not been satisfied. The declaration appears to have been pieced together from separately executed declarations to create a single composite declaration. Applicants have provided one page each of pages 1 and 2, but four pages 3. Further, three of the pages 3 contain non-initialed, non-dated alterations to the page number. It is improper for anyone to modify the oath or declaration after execution by the inventors. Applicants must submit the declaration as executed by the inventors and it must comply with 37 CFR 1.497(a)-(b). New oaths or declarations executed by the inventors are required. 37 CFR 1.52(c)(1).

CONCLUSION

For the above reasons, applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Failure to timely file the proper response will result in abandonment of this application. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

Erin P. Thomson

Erin P. Thomson
Attorney Advisor
PCT Legal Administration

Telephone: 571-272-3292
Facsimile: 571-273-0459